

UNITED STATES DISTRICT COURT
DISTRICT OF NEVADA

EMERSON LESLIE,

Plaintiff(s),

v.

GENEVIEVE CRAGGS, et al.,

Defendant(s).

Case No.: 2:19-cv-01206-RFB-NJK

ORDER

The Court has granted Plaintiff's motion to proceed *in forma pauperis*, Docket No. 12, and now screens his complaint pursuant to 28 U.S.C. § 1915.

I. BACKGROUND

Although at times convoluted, the factual scenario painted by the complaint is as follows.¹ Plaintiff alleges that he was arrested on April 1, 2018, for assault with a deadly weapon, possession of a stun gun, and domestic battery. Docket No. 1-1 at 5. Plaintiff alleges that he was then held in custody despite two preliminary hearings at which the charges against him were dismissed for lack of evidence. *See id.* at 9. Plaintiff alleges that, despite the failure of the state to successfully proceed with fresh criminal charges, he was still imprisoned based on the above conduct and eventually found to have violated the terms of his parole. *See id.* at 11. As of the time he initiated

¹ The Court construes Plaintiff's complaint liberally. *Blaisdell v. Frappiea*, 729 F.3d 1237, 1241 (9th Cir. 2013).

1 this lawsuit, Plaintiff remained in custody but was scheduled to again be paroled as of September
2 3, 2019. *See* Docket No. 4 at 3.

3 Plaintiff brought suit against 11 defendants who were involved in various stages with the
4 above events, including the arresting officers, the prosecutors, the parole officers, and the parole
5 board commissioners. *See* Docket No. 1-1 at 2-4. Plaintiff alleges that these defendants violated
6 various of his rights by fabricating evidence, maliciously prosecuting him, conspiring to advance
7 parole violation proceedings when the concurrent criminal proceedings floundered, and sentencing
8 Plaintiff for a parole violation. *See id.* at 5-12. Plaintiff brings suit under 42 U.S.C. § 1983 for
9 violation of various constitutional rights.

10 **II. STANDARDS AND ANALYSIS**

11 Upon granting an application to proceed *in forma pauperis*, courts additionally screen the
12 complaint pursuant to § 1915(e). Federal courts are given the authority to dismiss a case if the
13 action is legally “frivolous or malicious,” fails to state a claim upon which relief may be granted,
14 or seeks monetary relief from a defendant who is immune from such relief. 28 U.S.C. § 1915(e)(2).
15 When a court dismisses a complaint under § 1915, the plaintiff should be given leave to amend the
16 complaint with directions as to curing its deficiencies, unless it is clear from the face of the
17 complaint that the deficiencies could not be cured by amendment. *See Cato v. United States*, 70
18 F.3d 1103, 1106 (9th Cir. 1995).

19 Rule 12(b)(6) of the Federal Rules of Civil Procedure provides for dismissal of a complaint
20 for failure to state a claim upon which relief can be granted. Review under Rule 12(b)(6) is
21 essentially a ruling on a question of law. *See Chappel v. Lab. Corp. of Am.*, 232 F.3d 719, 723
22 (9th Cir. 2000). A properly pled complaint must provide a short and plain statement of the claim
23 showing that the pleader is entitled to relief. Fed. R. Civ. P. 8(a)(2); *Bell Atlantic Corp. v.*
24 *Twombly*, 550 U.S. 544, 555 (2007). Although Rule 8 does not require detailed factual allegations,
25 it demands “more than labels and conclusions” or a “formulaic recitation of the elements of a cause
26 of action.” *Ashcroft v. Iqbal*, 556 U.S. 662, 678 (2009) (*citing Papasan v. Allain*, 478 U.S. 265,
27 286 (1986)). The Court must accept as true all well-pled factual allegations contained in the
28 complaint, but the same requirement does not apply to legal conclusions. *Iqbal*, 556 U.S. at 679.

1 Mere recitals of the elements of a cause of action, supported only by conclusory allegations, do
2 not suffice. *Id.* at 678. Secondly, where the claims in the complaint have not crossed the line from
3 conceivable to plausible, the complaint should be dismissed. *Twombly*, 550 U.S. at 570.
4 Allegations of a *pro se* complaint are held to less stringent standards than formal pleadings drafted
5 by lawyers. *Hebbe v. Pliler*, 627 F.3d 338, 342 & n.7 (9th Cir. 2010) (finding that liberal
6 construction of *pro se* pleadings is required after *Twombly* and *Iqbal*).

7 Plaintiff here fails to state a claim for at least three reasons. First, Plaintiff's claims against
8 the assistant district attorneys for malicious prosecution are barred by the doctrine of prosecutorial
9 immunity. Such immunity protects eligible officials when they are acting pursuant to their official
10 role as advocates performing functions "intimately associated with the judicial phase of the
11 criminal process." *Imbler v. Pachtman*, 424 U.S. 409, 430 (1976); *see also Kalina v. Fletcher*,
12 522 U.S. 118, 124-26 (1997). Such immunity applies regardless of allegations of malice, bad faith,
13 or conspiracy. *See Ashelman v. Pope*, 793 F.2d 1072, 1077-78 (9th Cir. 1986) (en banc). Plaintiff's
14 claims against the prosecutors are premised on allegations that they proceeded in the case against
15 Plaintiff "with malice and without probable cause" and despite having exculpatory evidence. *See*,
16 *e.g.*, Docket No. 1-1 at 8, 9. Such allegations cannot state a claim in light of the prosecutorial
17 immunity that these attorneys hold.

18 Second, Plaintiff's claims against the parole board commissioners are barred by the
19 doctrine of quasi-judicial immunity. Such immunity protects parole commissioners exercising
20 quasi-judicial responsibilities in rendering parole decisions. *Sellars v. Procutner*, 641 F.2d 1295,
21 1302 (9th Cir. 1981). Quasi-judicial functions or those that are "functionally comparable to tasks
22 performed by judges" exist where parole board members adjudicate whether the grant, deny, or
23 revoke parole. *Swift v. Cal.*, 384 F.3d 1184, 1189 (9th Cir. 2004). Plaintiff's claims against the
24 commissioners are premised on allegations regarding their handling of his parole revocation,
25 including that they unfairly granted continuances of the revocation hearing so that the government
26 could collect additional evidence and then ultimately made their determination when the
27 government was ready to proceed. *See* Docket No. 1-1 at 9-11. Such allegations cannot state a
28 claim in light of the quasi-judicial immunity that these commissioners hold.

1 Third, Plaintiff's claims against all Defendants are barred by the *Heck* doctrine. The
 2 Supreme Court has held that a § 1983 action cannot be used to collaterally attack a criminal
 3 conviction unless the conviction or sentence has been reversed on direct appeal, expunged by
 4 executive order, declared invalid by a state tribunal authorized to make such a determination, or
 5 called into question by a federal court's issuance of a writ of habeas corpus. *Heck v. Humphrey*,
 6 512 U.S. 477, 486-87 (1994). In determining whether a § 1983 claim is barred by *Heck*, the critical
 7 question is whether finding in the plaintiff's favor would necessarily imply the invalidity of his
 8 conviction or sentence. *See, e.g., Szajer v. City of Los Angeles*, 632 F.3d 607, 611 (9th Cir. 2011).²
 9 In this case, Plaintiff alleges that the evidence used against him was fabricated, that there was not
 10 probable cause for his arrest, that government actors conspired to bring parole violation
 11 proceedings, and that his parole revocation proceedings were improper. Finding in Plaintiff's
 12 favor on these allegations would call into question the finding that he violated the terms of his
 13 parole and his subsequent sentence. *See, e.g., Guerrero v. Gates*, 442 F.3d 697, 703 (9th Cir. 2006)
 14 (holding that *Heck* barred claims for wrongful arrest, malicious prosecution, and conspiracy to
 15 bring false charges); *Cabrera v. City of Huntington Park*, 159 F.3d 374, 380 (9th Cir. 1998)
 16 (holding that *Heck* barred claims for false arrest and false imprisonment); *Smithart v. Towery*, 79
 17 F.3d 951, 952 (9th Cir. 1996) ("There is no question that *Heck* bars Smithart's claims that
 18 defendants lacked probable cause to arrest him and brought unfounded criminal charges against
 19 him"). Moreover, Plaintiff does not allege that his sentence was reversed or otherwise invalidated;
 20 to the contrary, the record shows that Plaintiff served his sentence until he was again released on
 21 parole. *See, e.g., Docket No. 7 at 2.*

22 In short, § 1983 claims³ cannot be brought against prosecutors for their actions in relation
 23 to the judicial phase of the prosecution or against parole board commissioners for their actions in

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 25 ² *Heck* applies to claims implicating the validity of a parole or probation revocation.
 26 *Cavanagh v. County of Ventura, Cal.*, 2011 WL 6210626, at *9 (C.D. Cal. Oct. 13, 2011)
 (collecting cases), *adopted*, 2011 WL 6225264 (C.D. Cal. Dec. 13, 2011).

27 ³ Plaintiff may also be attempting to bring a claim under state law. *See Docket No. 1-1 at*
 28 10 (referencing alleged violation of the Nevada Constitution). The Court expresses no opinion
 herein on the validity of any state law claim. *Cf.* 28 U.S.C. § 1367(c)(3) (upon dismissal of federal
 claims, federal courts may decline to exercise supplemental jurisdiction over state law claims).

1 relation to revoking parole. Moreover, claims cannot be brought more generally to the extent they
2 would call into question the validity of the revocation of parole. Although it is not clear that
3 Plaintiff can cure these deficiencies, the Court will afford him the opportunity to amend his
4 complaint to the extent he believes that he can do so.

5 **III. CONCLUSION**

6 For the reasons explained above, Plaintiff's complaint is **DISMISSED** with leave to
7 amend. Plaintiff will have until **July 10, 2020**, to file an amended complaint, if the noted
8 deficiencies can be corrected. If Plaintiff chooses to amend the complaint, Plaintiff is informed
9 that the Court cannot refer to a prior pleading (i.e., the original complaint) in order to make the
10 amended complaint complete. This is because, as a general rule, an amended complaint supersedes
11 the original complaint. Local Rule 15-1(a) requires that an amended complaint be complete in
12 itself without reference to any prior pleading. Once a plaintiff files an amended complaint, the
13 original complaint no longer serves any function in the case. Therefore, in an amended complaint,
14 as in an original complaint, each claim and the involvement of each Defendant must be sufficiently
15 alleged.

16 **Failure to file an amended complaint by the deadline set above will result in the**
17 **recommended dismissal of this case.**

18 IT IS SO ORDERED.

19 Dated: June 11, 2020

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22 Nancy J. Koppe
23 United States Magistrate Judge
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